IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/01/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRL.O.P.No.1969 of 2003 and CRL.O.P.No.1975 OF 2003
and
Crl.M.P.No.680 and 693 of 2003

Chockalingam ..... Petitioner in both Ops.

-Vs-

Swastik Filaments Pvt. Limited
No.18/16, C.P.Ramasamy Road
Abiramapuram, Chennai 18. ..... Respondent in both Ops.

Petitions filed to call for the records relating to Crl.M.P.No.5281 and 5282 of 2002 in C.C.No.4153 and 3431 of 202, on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai and to set aside the same.

For Petitioner : Mr.K. Sakthivel
For Respondent : ...

:ORDER

Both the above Crl.O.Ps have been filed by the same petitioner. The first Crl.O.P.No.1969 of 2003 has been filed by the petitioner praying to call for the records relating to Crl.M.P.No.5281 of 2002 in C. C.No.4153 of 2002 on the file of XXIII Metropolitan Magistrate, Saidapet, Chennai, and set aside the order dated 15.11.2002 made by the said Court. The second Crl.O.P.No.1975 of 2003 has been filed by the petitioner praying to call for the records in Crl.M.P.No.5282 of 2002 in C.C.No.3431 of 2002 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai and set aside the order dated 15.11.2002 made by the said Court.

2. The petitioner in both the C.C.Nos.4153 of 2002 and 3431 of 2002 has filed applications before the trial Court in Crl.M.P.No.5281 of 2 002 and Crl.M.P.No.5282 under Section 205 Cr.P.C on certain grounds such as, that he is a business man dealing in fish-nets at Peravurani, Tanjavur District besides being an agriculturist; that both the business require his personal attention at his native place Peravurani, and the petitioner's absence even for a day may result in loss and hardship in the business which would become irrepairable; that the petitioner has already lost his main crop and now he is solely dependent on the short term crop; that his native place is deviated from Chennai by 400 kms and for showing his appearance in both the above cases on each and every hearing, it is not that much easy and therefore would pray that his personal attendance may be dispensed with and to appear before the

Court by his plead.
3. The trial Court without having any discussion on the hardships raised on the part of the petitioner, simply stating that unless the petitioner appears in person for each and every hearing, the case could be disposed of at the earliest and in case, he is not able to appear before the Court for any reason, he could file applications under Section 317 Cr.P.C and on such grounds, would dismiss the applications filed in both cases as a result of which the petitioner has come forward to file both the above Crl.O.Ps on certain grounds as pleaded in his grounds of the above Crl.O.P.
4. In the above circumstances, the only point for consideration is whether the order passed by the trial Court dated 15.11.2002 in Crl.M.P.Nos.5281 of 2002 and 5282 of 2002 in the above Calendar Cases is just and proper and acceptable one or do they become liable to be set aside as it is prayed for on the part of the petitioner?
5. Section 205 Cr.P.C is of two parts. Subsection(1) of Sec.205 deals with the Magistrate dispensing with the personal attendance of the accused and permitting him to appear by his pleader. Subsection(2) of Section 205 deals with the Magistrate enquiring into or trying the case may, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce his attendance in the manner provided by the code.
6. This facility to permit the party to appear by his pleader and if necessary, the Magistrate could summon the accused is envisaged in Section 205 Cr.P.C, only to make use of the same whenever it is required and wherever necessary in the circumstances of the case. Needless to mention that since the case in hand before the trial Court being those instituted under Section 138 of the Negotiable Instruments Act, by the other side, it cannot be said that on all hearings, the personal attendance of the accused is a must and in fact, on such occasions wherein the attendance of the accused is absolutely necessary, say at the time of questioning the accused or pronouncing the Judgment etc., the Magistrate is at liberty to summon the accused as envisaged under Section 205(2) Cr.P.C and hence the Section is intended only for providing such facilities to the accused and therefore in these circumstances of the case as broughtforth on the part of the petitioner, the Magistrate should have permitted the petitioner to appear by his counsel during all hearings, unless he is specifically summoned to show his personal attendance. However, the Magistrate shall lay emphasis that when the case is called on every hearings, his counsel must attend to instead of the accused lest the Magistrate is at liberty to pass his own orders on such absence of the counsel, since the same is laid emphasis by law.

In result, (i) both the above Crl.O.Ps are allowed.
(ii)both the orders passed by the Magistrate in Crl.M.P. Nos.5281 and 5282 of 2002, are hereby set aside.
(iii) The petitioner is permitted to appear by his pleader on such hearings unless his personal attendance is required by the trial Court.
(iv) Consequently, Crl.M.P.Nos.680 and 693 of 2003 are closed.

Index: Yes
Internet:yes

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